

UNITED STATES DISTRICT COURT, FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA

APR 27 2009

U.S. DISTRICT COURT  
CLARKSBURG, WV 26301

United States

v.

Case No.

Dwayne Anderson

1:06 CR 20

Date: 04-24-09

RE: MOTION to RECUSE

MOTION

Comes now, Dwayne Anderson, PRO-SE, and moves the Court to recuse the honorable judge Irene Keeley. The following is in support of defendants motion.

1.) Judge Keeley set through defendants entire trial and stated on the record that the Conspiracy (Count one) was the weakest and most vaguest Conspiracy she has seen her entire time on the bench, but she kept defendant in the Conspiracy. 'Why did judge Keeley keep defendant in the Conspiracy?'

2.) Judge Keeley dismissed both of defendants motions, Pre-Sentence and post trial, for lack of evidence. But the higher Court overturned defendants conviction of Conspiracy (Count one). The higher Court stated that there was no evidence to link the defendant to the Conspiracy.

'What evidence did judge Keeley see?'

3.) Judge Keeley chose to ignore the fact that defendant was not in the Conspiracy and sentenced defendant to 292 months (24 1/2 yrs.) for Conspiracy.

'Why would judge Keeley give me a life sentence for some -

thing I did not do?'

4.) Judge Keeley sentenced me according to "crack" cocaine when the laboratory expert testified that the drug in defendants count (13) in the indictment was powder cocaine. 'Why do judge Keeley want to put "crack" on defendant?'

5.) Judge Keeley gave defendant a two level enhancement for using minors, even though probation officer (in PSK) said there was no evidence that defendant was involved with minors. 'Why did judge Keeley ignore the probation officers report?'

6.) Judge Keeley stated at sentencing that she sees defendants life as a wasted life when she only heard testimony that only covered two of defendants forty three years. 'How is judge Keeley summing up my entire life on the conduct of two to three years?'

7.) Judge Keeley ignored the fact that I pastored a church and preached the word of GOD for thirty years of my life. Judge Keeley chose to ignore the fact that I am a college graduate with an AAS degree. 'Why?'

8.) Judge Keeley stated at my 10-23-08 motions hearing that I will always be a threat to society. I have no gun charges or violent crimes on my record, as a matter of fact I was forty years old when I was convicted of my first felony.

'How can judge Keeley conclude that I was ever a threat to society?'

9.) Judge Keeley knows that I'm charge with the wrong charge in count thirteen (Aiding and abetting).

'Why do judge Keeley want to sentence me knowing I'm innocent?'

10.) Judge Keeley took the burden of proof from the government and ignored the testimony of trooper Smith who testified that he did not know who answered the phone Dec. 13<sup>th</sup> 2005 in count thirteen. Trooper Smith was the only government witness that testified to count thirteen. The government never proved who answered the phone.

SO why didn't judge Keeley acquit defendant on count thirteen

11.) Judge Keeley still refuses to allow me to prove my innocence by having the tape (that is in her court) analyzed to prove that I answered the phone in count thirteen. I have motioned the Court twice to have the tape analyzed, but judge Keeley denied both motions.

Why do judge Keeley want to avoid analyzing the tape?

IN Closing defendant concludes that the answers to the above questions is simple. Judge Keeley had her mind set on defendants guilt before the trial began. Judge Keeley ignored the fact that there was no evidence presented at trial that proved I was guilty of count one (Conspiracy) or count thirteen (aiding and abetting).

The only reason count thirteen was affirmed by the higher Court was because the sufficiency of the evidence was not challenged. Judge Keeley has been bias from the beginning of the case when she denied defendants pretrial motions and allowed defendant to be in a "crack Cocaine Conspiracy when the defendant's sale in the indictment was power Cocaine.

Judge Keeley prejudiced the defendant by allowing

testimony that defendant used minors when there was no proof of any minors. The one name that the witness (Nina Baxter) named as being dealt with as a minor (Jesse Lee) was incarcerated with ms. Baxter at the time of her testimony. No one under the age of 18 can be in a West Virginia state penitentiary. Ms. Lee was 23 or 24 yrs old in Oct. 2006 during defendant's trial, defendant met m Lee in 2004 for the first time.

Judge Keeley also prejudiced the defendant by allowing witnesses to testify before the jury that the drugs they seen, purchased or even used was crack, when the only sure testimony came from the lab expert, who testified that her findings was Cocaine hydrochloride and Cocaine base from Dec. 15<sup>th</sup> which was not charged.

Judge Keeley clearly demonstrate abuse of the Court concerning defendant, and the following answers to the above questions will show grounds why judge Keeley should recuse herself or be recused.

- 1.) Judge Keeley was so bias she ignored defendant's innocence.
- 2.) Judge Keeley was so bias she proffed evidence.
- 3.) I am so terrible in judge Keeley's mind she can never give me a fair or warranted sentence.
- 4.) Judge Keeley is so bias against me that she turned my drug into "crack" to warrant a much larger sentence.
- 5.) Judge Keeley found another way to enhance my sentence without any evidence. "That's bias"!
- 6.) Judge Keeley is so bias against me that she would not consider the accomplishments or the conduct



- of over thirty years of my life (35 V.S swings-bias)
- 7.) Judge Keeley is bias against me
  - 8.) Judge Keeley has made up her own mind and concludes without facts to get what she wants.
  - 9.) Judge Keeley was so bias at sentencing, she said that although you're not charged with distribution you would be at this point anyway. In other words you may be charged wrong, but you would still be getting sentenced even if we had charged you right.
  - 10.11.) Judge Keeley would rather ignore the law and violate her position than rule in my favor.

for the above facts defendant prays that judge Keeley will be recused or do the right thing and recuse herself that the defendant can have a fair and impartial hearing.

Respectfully Submitted

Dwayne Anderson

cc: dka/file

others concerned individuals